

JAMES NEIL FLETCHER

IBLA 84-135

Decided January 24, 1984

Appeal from a decision of the Nevada State Office, Bureau of Land Management, rejecting desert land entry application, N 22296.

Affirmed.

1. Desert Land Entry: Applications -- Desert Land Entry: Water Right

A desert land entry application is properly rejected where the applicant fails to provide evidence of a water right or that he has initiated, so far as then possible, appropriate steps looking to the acquisition of such a water right.

2. Notice: Generally

All persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations.

APPEARANCES: George M. McClarrinon, Esq., Sacramento, California, for appellant.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

James Neil Fletcher appeals from an October 12, 1983, decision of the Nevada State Office, Bureau of Land Management (BLM), rejecting his desert land entry application, N 22296, because he failed to provide evidence that he had proceeded as far as possible in acquiring a right to water for irrigation of his entry.

Fletcher filed his desert land entry application on March 23, 1979, for 320 acres in Elko County, Nevada. However, he did not provide all the information requested by the application form and subsequently BLM issued several notices of deficiencies. In particular, BLM referred to question 12(b)

regarding the acquisition of a right to sufficient irrigation water. 1/ Without marking either of the boxes designated "Yes" and "No," applicant initially responded to the question by writing "Pending application." When he filed the requested information, he answered question 12(b) by marking an "x" in the "No" box. Thereafter, BLM issued the decision from which he appeals.

In his statement of reasons, Fletcher argues that until the October 12, 1983, decision, he was not aware nor informed of the requirement that he must proceed as far as possible to acquire the necessary water rights. 2/ Pleading compliance with this requirement, he submits evidence of a water right application filed with the Nevada State Engineer's Office on November 30, 1983, some seven weeks after BLM's decision rejecting the desert land entry application.

[1] The Desert Land Act, 43 U.S.C. § 321 (1976), provides for the entry of desert lands for the purpose of reclaiming them "by conducting water upon the same \* \* \* Provided, however, that the right to the use of water by the person so conducting the same \* \* \* shall depend upon bona fide prior appropriation." The pertinent regulation, 43 CFR 2521.2(d), provides that no desert land entry application will be allowed unless accompanied by evidence satisfactorily showing that the intending entryman has acquired the right to permanent use of sufficient water to irrigate and reclaim all of the irrigable portion of the land sought, or that he has initiated and prosecuted, so far as then possible, appropriate steps looking to the acquisition of such a water right. The Department has consistently held that a desert land entry application without evidence of a water right must be rejected. Janice Pearson, 73 IBLA 220 (1983); James R. Hardcastle, 69 IBLA 341 (1982).

[2] Fletcher grounds this appeal on his assertion that he was unaware of the need to comply with this requirement. However, persons dealing with the Government are presumed to have knowledge of relevant statutes and duly

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1/ Fletcher used desert land entry application form 2520-1 (August 1977). Question 12(b) appears therein as follows:

"Have you proceeded as far as possible toward acquiring by appropriation, purchase, or contract, a right to the permanent use of sufficient water to irrigate and reclaim permanently all of the irrigable portions of each of the legal subdivisions applied for? ☐ Yes ☐ No (If "yes," you must present as evidence and make a part of this application copies of any commitments [sic] you may have which show the legal source of your proposed water supply.)"

2/ He also claims that adjacent desert land entries have not been compelled to comply with the requirement at issue. However, he has not submitted any proof supporting such an allegation and does not indicate how such condition would render BLM's decision erroneous. Even if he were able to demonstrate that other entries had been wrongly allowed in the past, this would not provide a basis for re-enacting the wrong in this case. George Brennan, 1 IBLA 4, 6 (1970).

promulgated regulations. Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947); 44 U.S.C. §§ 1507, 1510 (1976). It is expected that a party anticipating a benefit should be familiar with the relevant authority under which such benefit is to be conferred and with which he must comply.

Fletcher declared on his application that he had not complied with this requirement. The only other information provided with the application regarding the prerequisite water right was the unexplained and ambiguous reference "Pending application." Moreover, his request to appropriate water sufficient to irrigate 80 of the 320 acres sought was not filed with the State of Nevada until long after BLM's decision. Evidence thereof was only recently received by the Department. Accordingly, BLM's action to reject the application was proper. This rejection, however, is not prejudicial to his right to file another complete application with the evidence of his newly-initiated efforts to obtain a sufficient water right.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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Edward W. Stuebing  
Administrative Judge

We concur:

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Gail M. Frazier  
Administrative Judge

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Wm. Philip Horton  
Chief Administrative Judge

